S.B.Civil Writ Petition No.5072/2005
Utsav Kumar & Ors.
vs
UIT, Bhilwara & Ors.

Date of order : 23.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Manish Shishodia, for the petitioners.
Mr.Pradeep Shah]
Mr. T.Gupta,]for the respondents.

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Heard learned counsel for the parties.

The petitioners-plaintiffs are aggrieved against the order of the trial court dated 27th July, 2005.

It appears from the facts of the case that plaintiffs filed the suit for permanent injunction and during the pendency of the said suit, the plaintiffs filed amended plaint. Alongwith the amended plaint, the plaintiffs submitted certain documents, which were executed and got registered by one of the defendants only. Those documents when were submitted alongwith the amended plaint, then the defendants objected to it. The trial court vide order dated 4.12.1993 held that plaintiffs cannot get any right to produce the documents merely because of allowing the amendment and, therefore, the documents were not allowed to be taken on record. The objection of the defendants was that the documents cannot be taken on record without leave of the court under Order 13 Rule 2 CPC, therefore, plaintiffs

filed the another application which is under Order 13 Rule 2 CPC for taking on record the documents, which were already filed. The trial court while rejecting the application of the plaintiffs observed that plaintiffs' said prayer was already rejected by order dated 4.12.1993 and, therefore, there is no justification for the plaintiffs- applicants to file an application under Order 13 Rule 2 CPC.

Learned counsel for the petitioners submitted that the genuineness of the documents is not questioned by anybody and the documents was executed and got registered by the UIT, Bhilwara, one of the defendants. The trial court proceeded under wrong impression that plaintiffs' prayer for producing the documents was rejected vide order dated 4.12.1993 under Order 13 Rule 2 CPC.

Learned counsel for the respondents submitted that it is true that documents were registered after framing of the issues, but they were executed before framing of the issues. It is also submitted that the trial court rightly dismissed the plaintiffs' application under Order 13 Rule 2 CPC.

I considered the submissions of learned counsel for the parties and perused the facts of the case as well as the order dated 4.12.1993, the earlier order on the basis of which the subsequent order dated 27.7.2005 was passed by the trial court. The order

dated 4.12.1993 was not passed on the application filed under Order 13 Rule 2 CPC, but was passed on objection raised by the defendants that the plaintiffs cannot get any right to produce the documents only because of allowing amendment in the plaint by the court below. It appears that objection was because of the reason that the documents can be produced after framing of issues with the leave of the court under Order 13 Rule 2 CPC. In that situation, the plaintiffs moved application under Order 13 Rule 2 CPC. The documents which are genuine and alleged to have been executed by the defendants could not have been disallowed by the court below. The trial court proceeded under absolutely wrong impression and by misconstruing the order dated 4.12.1993 dismissed the application of the petitioners.

In view of the above, the writ petition of the petitioner is allowed. The order of the trial court dated 27.7.2005 is set aside. The documents are taken on record.

(PRAKASH TATIA), J.

c.p.goyal/-